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ESTABLISHING LOCAL HISTORIC DISTRICTS



Massachusetts Historical Commission

Published by the
Office of the Secretary of the Commonwealth
Massachusetts Historical Commission

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Establishing Local Historic Districts is funded with the assistance of a
matching grant-in-aid from the U.S. Department of the Interior,
National Park Service, under provisions of the National Historic
Preservation Act of 1966.

Establishing Local Historic Districts 2nd rev. ed. editor: Patricia Weslowski
May 1978; reprinted September 1979, October, 1981, June 1982, February, 1984
August, 1985, November 1985

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History of Historic District Legislation

The historic district movement began in the United States with the adoption of historic district ordinances in Charleston, South Carolina in 1931 and in New Orleans, Louisiana in 1937.¹ The regulations of these districts provided that no changes be made to the exterior architectural features of buildings, structures and sites visible from a public street within the designated area without a certificate of appropriateness.

The first Massachusetts Historic District legislation was proposed in 1955. Following opinions rendered to the General Court by the Massachusetts Supreme Court which held that these districts were constitutional, Special Acts of the Legislature creating the Beacon Hill District and the Historic Districts in Nantucket were passed. Subsequently fifty-seven municipalities have established historic districts, either under the Historic Districts Act or under Special Act.

The Historic Districts Act, Chapter 40C of the General Laws, was enacted by Chapter 372 of the Acts of 1960, effective August 7, 1960. The provisions of Chapter 40C are essentially the same as those adopted by Charleston and New Orleans. All but Section 1 of the Historic Districts Act was amended by Chapter 359 of the Acts of 1971, effective September 1, 1971. The amendment now applies to the municipalities which had previously acted under Chapter 40C as well as to all acting subsequently. The Historic District Act has been most recently amended by Chapter 706 of the Acts of 1975 and appears as Appendix B to this manual. Historic district legislation in Massachusetts exists separately from the state zoning enabling legislation and is not intended to regulate the use of properties within historic districts.

¹This followed a state constitutional amendment to permit it.

Purpose of Historic Districts

Historic districts have three purposes as stated in the Historic Districts Act: (1) to preserve and protect the distinctive characteristics of buildings and places significant in the history of the Commonwealth and its cities and towns; (2) to maintain and improve the settings of those buildings and places; and (3) to encourage new designs compatible with existing buildings in the district. Areas proposed for historic district consideration can be of national, state or local significance. Historic districts should be created by cities and towns to protect areas which are significant in their own local development.

The preservation, through historic district legislation, of distinctive areas within a community can provide a city or town with a continuing sense of its past. It can limit the destruction and disintegration of the historical and architectural legacies of our ancestors, with the assurance that the best of these may be enjoyed by future generations. To the public, a district offers a visual example of our historical and cultural heritage. To its residents, it may afford protection from the decrease of land values through deterioration or neighborhood blight caused by demolition or inappropriate alteration of significant buildings.

An historic district may be established when "the relationship to each other of a sufficient number of buildings creates a whole which is greater than the sum of its parts."¹¹ Since architecture is visible evidence of the historical importance of such an area, historic district controls are designed to preserve the outward appearance and the harmonious exterior relationships of groups of buildings, structures and sites without changing their ownership or curtailing their use. These controls aim at preventing the intrusion of incongruous structures which would detract from the aesthetic and historical values of the district. Such controls do not prevent new construction. They apply only to exterior architectural features publicly visible and they may be further limited under the options provided in the Historic Districts Act.

Historic district designation is just one of several preservation measures that can be used to preserve the character and history of groupings of buildings, structures and sites in the Commonwealth and its cities and towns. Listing an area in the National Register of Historic Places, the selective use of preservation restrictions, and/or zoning can complement historic district efforts.

The National Register of Historic Places is a listing of the nation's buildings, districts, structures, and objects significant in its history, culture, architecture or archeology. Listing in the National Register provides recognition for the property, an opportunity for the property owner to apply for matching grants for acquisition and development projects, and a measure of protection for the property against any adverse effect caused by Federally

¹¹Cambridge Historic District Study Committee, Final Report, Cambridge 1962.

licensed, funded or assisted projects. Information on the National Register program and the use of preservation restrictions is available from the Massachusetts Historical Commission.

Checklist of Procedures

Each of the twenty steps below is explained in detail on the following pages.

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Steps to Establish an Historic District

1. VOTE TO ESTABLISH STUDY COMMITTEE requires a majority vote by the Selectmen or City Council (if another district is already established, the existing Historic District Commission may act as a Study Committee).

SAMPLE VOTE TO ESTABLISH AN HISTORIC DISTRICT STUDY COMMITTEE.

VOTED: There is hereby established under the provisions of Chapter 40C, General Laws, as amended by Chapter 359 of the Acts of 1971, an Historic District Study Committee consisting of _____ members, which shall make an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings included in such proposed historic district or districts as the Committee may recommend, and shall submit a final report with its recommendations after a public hearing, together with a map of the proposed district or districts and a draft of a proposed ordinance (by-law), to the City Council (Town Meeting).

ADDITION OF AN HISTORIC DISTRICT. An additional historic district may be created in a city or town in the same manner provided for the creation of the initial district. The investigation, report and hearing shall be carried out by the existing Historic District Commission in the city or town, or, if more than one exists, by the Historic District Commissions acting together, instead of a Study Committee, unless the Commission or Commissions recommend otherwise.

2. REQUESTS FOR NOMINEES sent by the Selectmen or Mayor/City Manager to the organizations specified in Section 4 of Chapter 40C requesting submission of nominees who might serve on the study committee. Three to seven members serve on an Historic District Study Committee. These are appointed in the towns by the Selectmen and in the cities by the Mayor or, where the City Charter so requires, by the City Manager.

REQUIRED MEMBERSHIP. The law requires that, where possible, membership should include nominees from the organizations listed below. The Selectmen or Mayor/City Manager should request in writing that these organizations submit nominees who might serve on an Historic District Study Committee.

Local Historical Society

One from two nominees submitted by the local historical society, or in the absence of such organization, one from two nominees submitted

by the Society for the Preservation of New England Antiquities, Dr. Abbott Lowell Cummings, Director, 141 Cambridge Street, Boston, Massachusetts 02114.

American Institute
of Architects

One from two nominees submitted by the chapter of the American Institute of Architects covering the area: Massachusetts State Association of Architects, 320 Newbury Street, Boston, Massachusetts 02115.

Board of Realtors

One from two nominees submitted by the Board of Realtors covering the area. There are twenty-seven regional Boards of Realtors covering Massachusetts. Before requesting nominations, the Selectmen or Mayor/City Manager should contact the Massachusetts Association of Realtors for the current address of the appropriate regional board: Massachusetts Association of Realtors, 4863 Prudential Tower, Boston, Massachusetts 02199.

Note: Nominees are not required to be from among the membership of the organizations nor to be residents of the community, but such membership and residence would normally be desirable.

3. **APPOINTMENT OF STUDY COMMITTEE** by Selectmen or Mayor/City Manager, subject to confirmation by City Council, after nominees' names are received or thirty days have elapsed without receipt.

APPOINTMENTS. One, two, three or four members in addition to those required under 2 above may be appointed if so authorized in the vote to establish the Study Committee or any amendment thereof. If any organization listed under 2 above fails to submit nominees within thirty days, the Selectmen or Mayor/City Manager may appoint members without the nomination from that organization.

ADDITIONAL MEMBERSHIP SUGGESTIONS. Besides those members of organizations entitled to make nominations, consideration may as well be given to individuals possessing qualifications listed below. A Study Committee can be most effective if its membership embraces a variety of organizations and individuals whose interests are allied with historic preservation. *Lawyers* are a definite asset to any Study Committee or Commission. They can help the Committee interpret the law and, in that way, aid Town (City) Counsel. *Professional architectural historians* can aid the Committee by identifying and describing the significant characteristics of the buildings within the

proposed district. Professional historians should know and be able to explain the research techniques necessary in order to create a scholarly report. Landscape architects provide knowledge regarding the significant landscape and structural features which should be protected. Members chosen from the Conservation Commission and the Planning Board are helpful because they bring knowledge with them of allied town services. It is always a good idea to have a member who is experienced with public relations, since historic district zoning may have to be explained to the community. Such a person will be an asset in writing the preliminary and final reports. A businessman can relate to the concerns of other businessmen who might own property in a proposed historic district. Above all, the members of the Committee should be those who know the people in the community and can support the concept of historic districts and their value to those people.

CONFLICT OF INTEREST LAW. Under G.L. ch. 268A, if any Committee member is to hold a city or town job or to have directly or indirectly a financial interest in any contract with the city or town, classification of the member by the City Council, Aldermen or Selectmen as "special municipal employee" should be obtained and disclosure statements and other requirements met.

4. **FIRST MEETING OF THE STUDY COMMITTEE:** election of Chairman and Secretary, unless designated by the appointments; explanation of duties, procedures, etc.

ORGANIZATION OF A STUDY COMMITTEE. When all the members of the Committee have been appointed and have been sworn in by the Town Clerk, either the Selectmen, the first person named in the list of appointees or any member should call a meeting. If all the appointees are present, the Committee should organize on a permanent basis. If less than all are present, a temporary chairman and secretary should be elected. Notice of the second meeting should be given by the temporary secretary. Names of the officers should be given to the Town Clerk and sent to the Massachusetts Historical Commission.

PROCEDURES FOR MEETINGS. Follow Robert's Rules of Order or the procedure of town or city council meeting.

OPEN MEETING LAW. Chapter 39, Sections 23 a-c. The Open Meeting Law requires that committees and commissions hold open meetings, notice of which must be posted in the city or town clerk's office at least 24 hours in advance. In order to discuss and vote on matters which, if made public, might adversely affect "the financial interest" of a town or city or "the reputation of any person", a committee or commission may vote to go into an Executive Session. Open ballots or voice votes are required in an open

meeting, and no visitor may speak without permission. There is an express provision that failure to give the required public notice of any meeting shall not invalidate actions taken at the meeting. Nonetheless, such failure can be bad public relations, as well as a cause of legal complications.

Community understanding of historic district concepts is crucial to success in efforts to create historic districts. Once the historic district study committee has been appointed and has had its first meeting, immediate consideration should be given to the development of strategies to educate the public. Newspaper articles, brochures and/or informational meetings can be used to familiarize the public, both within and outside potential districts, with the philosophy of historic district designation and what it would mean to them. Where positive programs to educate the public concerning historic district designation exist, the likelihood for success is far greater.

5. HISTORIC PROPERTIES SURVEY of buildings, sites, structures and areas in the community.

The Historic District Act requires a Study Committee to make an investigation of buildings, structures and sites of architectural and historical significance. It is recommended that this investigation not be limited to the area(s) considered for historic district(s). The Study Committee should locate on a map, photograph and record the architecture and history of the significant properties in the city/town. The survey may have been accomplished substantially or in part by the local historical commission or the local historical society. If no such survey has been made, the Study Committee should undertake this with as much aid as it can enlist. It may need professional assistance and may wish to seek city/town or charitable funds and/or federal matching funds. In all cases the local historical commission, if any, should be consulted both for its expertise and to avoid costly duplication of effort.

The survey provides the justification for choosing certain areas to be protected by historic districting. When the survey has been completed, the map on which significant properties have been located should quickly indicate concentrations of buildings of historical and architectural value.

The Massachusetts Historical Commission has prepared a manual describing procedures for inventorying as well as standardized forms for recording buildings and areas. For survey purposes all sections of the forms should be completed except for deed information. The Massachusetts Historical Commission will supply these materials to Study Committees on request.

6. **EVALUATION OF SURVEY** for the selection of historic district(s) and of district boundaries.

EVALUATION FOR SELECTION OF DISTRICT(S). Concentrations, or areas, of architecturally significant buildings and structures found as a result of the survey may be potential historic districts. The Study Committee should determine whether historic districting offers the most suitable protection for these areas and, if so, the order in which these areas will be proposed for historic districting. Priority may be determined according to the relative significance of each area, the need for protection and other factors. The Study Committee must also keep in mind that an historic district provides protection to the exterior architectural features of the buildings and structures which are visible from a public way. It should also familiarize itself with the options available to it (see item 7 below).

EVALUATION FOR SELECTION OF BOUNDARIES. In determining the boundaries of the historic district(s), the Study Committee should consider:

- a. the significance of the architectural characteristics of each building and structure within the district and the degree to which they are visible from the public way;
- b. the buildings and structures on the edges of the district which are an asset, as part of the setting or as protection to historic properties, or which are a detriment, because of incongruity of style, mass, use, condition;
- c. the amount of open space within and on the edges of the district which can be justified as historic or necessary for protection to historic properties;
- d. the distance up side streets which district boundaries should extend to provide protection;
- e. the amount of open space visible from the main public ways within the district;
- f. the immediate surroundings of the district and the view into the district from the approaches to it.

TYPES OF BOUNDARIES. The boundaries of an historic district should be clear and indisputable. Various types of boundaries may be used by a Study Committee. These include natural boundaries such as hill crests, valleys, slopes, bodies of water; road curves; back lot lines; set-backs from a road of a given number of feet; and edges of roads. Any one or all or these types may be used to define an historic district.

Those boundary types which give the district the greatest justifiable protection should be adopted. In cities and suburbs back lot lines are desirable boundaries. In rural areas where lots are deep, natural boundaries or a designated set-back from the road may be used. When using a given set-back, the point of measurement should be carefully considered since the position of roads may change as they are widened or straightened. The set-back must be enough to include property which is visible from the public way and whose exterior architectural features should be controlled by the Historic District Commission. Yet that set-back should not be so great as to include too much non-justifiable open space. The middle of the street is usually not as desirable a boundary as one that includes both sides of the street to protect the settings and streetscape. A radial boundary of a certain number of feet from a given point is usually undesirable since (1) it may dissect an historic structure or property visible from the public way; (2) it is more apt to include non-historic property than a back lot boundary; and (3) its center of reference may be movable.

Some open land or non-historic property at the approaches to an historic district will insure that a proper setting is maintained for the district and for its individual components and will provide protection for the district in the later development of the open land or non-historic property. The district controls are keyed to structures and architecture, and should not be used where the primary purpose is open space preservation and other measures are more suitable.

PHOTOGRAPHIC RECORD. It is recommended that a photograph be taken from the "public way" of the buildings, structures and sites considered within the potential district. Photographs giving as much of the streetscape of the recommended district as practicable are helpful. These will provide the Study Committee and later the Historic District Commission with a visual record of architectural styles, details and appurtenances. These photographs, as well as the inventory forms, will be useful as exhibit material when presenting the Study Committee's report to the public hearing and to the City Council or Town Meeting. They are visual evidence of the historical and architectural significance of the district.

POLL OF RESIDENTS. It is suggested that the Study Committee conduct a poll of all the residents and property owners in the proposed district. The effect of the creation of an historic district on each property could be explained and then the Study Committee could determine how many residents and property owners would be willing to accept historic district control.

7. CONSIDERATION OF OPTIONS available for historic district controls.

The ordinance/by-law may provide that any one or all of the categories listed below may be exempted from review by an Historic District Commission (see Sections 8a and 8c of the law). It is necessary that the Study Committee consider these options when determining what the historic district will include and when creating the ordinance/by-law. If the Study Committee decides that the ordinance/by-law should include any of these categories, it should present these decisions at the public hearing and to the Massachusetts Historical Commission (see 8 below). *Please note:* If the ordinance/by-law does not exempt these categories from the review of the Commission, the Commission may do so later, after a public hearing.

CATEGORIES CONSIDERED FOR EXCLUSION FROM REVIEW.

- A. Temporary signs or structures, subject to the conditions set forth by "the Historic District Commission.
- B. Terraces, walks, driveways, sidewalks and other similar structures — any or all of them, *provided that* the structure is at grade level. (A change of grade level requires Historic District Commission review.)
- C. Walls, fences, either or both of them.
- D. Storm doors and windows; screen doors and windows; window air-conditioners, lighting fixtures, antennae and similar appurtenances, any one or more of them.
- E. Color of paint.
- F. Signs used for residential occupation or professional purposes which are not more than one foot square in area, *provided that*
 - 1. only one sign is displayed for each building or structure;
 - 2. the sign consists of letters painted on wood without a symbol or trademark; and
 - 3. if illuminated, is illuminated only indirectly.
- G. Signs used in connection with non-residential purposes which are not more than twelve square feet in area, *provided that*
 - 1. only one sign is displayed for each building or structure;
 - 2. the sign consists of letters painted on wood without a symbol or trademark; and
 - 3. if illuminated, is illuminated only indirectly.
- H. Reconstructions of a building, structure or exterior architectural fea-

ture which has been damaged or destroyed by fire, storm or other disaster, *provided that*

1. the exterior design is substantially similar to the original;
2. the reconstruction is begun within one year after the damage occurred and is carried on with "due diligence."

Furthermore, the authority of the Commission may be limited to the exterior architectural features within the district which are visible from one or more designated public streets, public ways, public parks, or public water bodies.

3. **PREPARATION OF PRELIMINARY REPORT** of proposed historic district(s). Include map(s) identifying buildings and boundaries selected, and an outline of, or notes on, ordinance/by-law options selected.

INTRODUCTION. The preliminary and final reports of the Study Committee are intended to generate the local support necessary for the creation of the historic district(s) by informing the community what an historic district is, why it provides valuable protection and what area(s) it will cover. Essential to the reports on the proposed historic district(s) are (1) justification of the architectural and historical significance of the area(s), individual buildings and structures and open space; and (2) an explanation of the protection which the setting provides for individual significant buildings and for the district(s) as a whole.

The report need not be elaborate. However, it should be written clearly and concisely. Statements of historical and architectural significance should be documented and a bibliography should be included in the report.

FORMAT OF THE PRELIMINARY REPORT. Reports should meet the following specifications: 8½ x 11 inches in size; bound at the side; typed or mimeographed on one side of the page only. Maps should be attached as appendices. Photographs may *not* be Polaroids or photocopies.

CONTENTS OF REPORT. Basically the report should include an explanation of what an historic district is, what area is being considered for historic district zoning, how the Study Committee chose the area(s), the justification of the boundaries chosen, and the historic and architectural significance of the district and of the individual buildings and structures within it. The report should also include recommendations made by the Study Committee and its suggested membership and administrative options (see below). Finally, it should contain a bibliography.

The Massachusetts Historical Commission has prepared an outline for a preliminary report which is attached as Appendix A. This outline is purposely detailed since it attempts to cover a wide range of factors relating to the creation of historic districts. However, the Study Committee should realize that not all these factors will be relevant to every historic district. Therefore, the Study Committee should review the full list of factors and incorporate in its report those which apply. Appendices to the preliminary report should include map(s), photographs and an outline of the ordinance/by-law options.

MEMBERSHIP AND ADMINISTRATIVE OPTIONS. Certain options are allowed an Historic District Commission if these are recommended in the report by the Study Committee and are also stated in the ordinance/by-law.

The report may

- (a) recommend that additional or alternate organizations submit nominations for membership of the Historic District Commission. The report must also state the reasons why such alternate or additional organizations would be appropriate, or more appropriate for the city/town. This recommendation must be included in the preliminary report submitted to the Massachusetts Historical Commission for its consideration before the public hearing (see Step 18, Additional or Alternate Nominations). (Ch. 40C, Sec. 4)
- (b) recommend that the residence requirement for membership to the Historic District Commission be waived if the number of residents or individual owners within the proposed district is small. (Ch. 40C, Sec. 4)
- (c) recommend that an existing Historic District Commission administer the historic district. (Ch. 40C, Sec. 4)
- (d) recommend that a review procedure be adopted whereby any applicant aggrieved by a determination of the commission may, within twenty days, appeal the decision to a person or persons designated by the regional planning agency of which the town or city is a member (Ch. 40C, Sec. 12)
- (e) recommend that the Historic District Commission shall have the powers and duties of an historical commission as provided in Section 8d of Chapter 40, if no such commission exists in the community. (Ch. 40C, Sec. 14)

MAPS. The locations of all buildings, structures and sites within the proposed district(s) should be placed on a large and scaled map (see 12 and 15 below). If buildings are not noted on these maps, their outlines should

be drawn in by the Study Committee. This will provide the position of the building in relation to its neighbors, to open space and to the public ways.

The significant buildings referred to in the report should be identified on the map (use a key) and the proposed boundaries of the district indicated. Other buildings and structures in the district should be keyed and identified by their type (barn, garage, gas station) or by date and/or style (ranch house, modern cape). Names of streets, public parks, and bodies of water should be included and a compass direction indicated.

PHOTOGRAPHS. A few good-sized photographs giving as much of the street-scape as possible should be appended to the preliminary report. These together with the inventory forms (and their attached photographs) of the significant buildings in the district will be useful to assist the Massachusetts Historical Commission staff in preparing its recommendations.

ORDINANCE/BY-LAW, OUTLINE OF OPTIONS. A number of options may be included in the ordinance/by-law. Because these options will affect the owners of property and residents in the proposed historic district(s), it is advisable that an outline of the ordinance/by-law accompany the preliminary report. (See Appendix B for more details concerning the considerations for ordinances/by-laws.)

9. SUBMISSION OF PRELIMINARY REPORT to the local Planning Board, if any, and to the Massachusetts Historical Commission.

The Study Committee shall submit copies of the preliminary report to the Planning Board, if any, for the city or town and to the Massachusetts Historical Commission for their consideration and recommendations. The report to each agency shall include as appendices a map showing the boundaries of the proposed district(s) and as many photographs as feasible of the district(s). The report to the Massachusetts Historical Commission shall also include as an appendix a standard inventory form for each significant building in the proposed historic district(s), unless such forms are already on file with the Commission.

The preliminary report submitted to the Massachusetts Historical Commission shall be accompanied by two copies of a cover letter. This letter shall include (1) the date on which the report is submitted; (2) a list of the Study Committee members and their qualifications; (3) the date of the Study Committee's appointment; (4) the signature of the Study Committee Chairman; and (5) a return address. The cover letters and preliminary report shall be submitted by certified mail or hand delivered. Upon receipt of these materials, the Massachusetts Historical Commission will date-stamp both copies of the cover letter and return one to the Study Committee for its files.

The Study Committee should contact its local Planning Board to determine whether that Board has its own requirements for preliminary reports submitted to it.

10. PUBLIC HEARING NOTICE to property owners and fulfillment of "Due Notice" requirements by Study Committee (see 11 below).

At least fourteen days before the scheduled date of the public hearing, all owners of property included in the proposed historic district(s) must be given written notice of the hearing. It is strongly suggested that owners also be given a copy of the preliminary report or a summary of its conclusion. Names of property owners should be obtained from the most recent real estate tax list of the Board of Assessors. These names should be obtained directly from the office of the Board of Assessors, since a printed version of the tax list may not be up-to-date.

Written notice might also be given to any residents of proposed historic district(s) who are not property owners. At the same time (fourteen days before the hearing), notice should also be published in a newspaper of general circulation in the city or town and should be given to the City or Town Clerk and to the concerned municipal officials.

11. PUBLIC HEARING held by the Study Committee.

Not less than sixty days after the preliminary report has been submitted to the Planning Board and to the Massachusetts Historical Commission, the Study Committee shall hold a public hearing on the proposed historic district(s). The primary subject of the public hearing is obviously the Study Committee's report, but the comments and recommendations from the Planning Board and the Massachusetts Historical Commission should also be taken into consideration.

12. PREPARATION OF FINAL REPORT by Study Committee.

Following the public hearing, the Study Committee shall prepare a Final Report, with any recommendations it may have on the proposed historic district(s), for submission to the City Council or Town Meeting. Towns will be required to send a copy of the final report as well as their by-law to the Attorney General for review, since the by-law may include sections based on recommendations made by the Study Committee in the final report (see 15 below). Most of the research necessary to produce the final report will already have been accomplished in completing the preliminary report. However, the preliminary report may be modified some-

what as a result of the recommendations by the Planning Board and the Massachusetts Historical Commission and of valid points raised at the public hearing.

The final report must be accompanied by a map of the proposed historic district(s) suitable for recording and a draft of the ordinance or by-law for the district(s). The actual drafting of the ordinance or by-law should be done with the assistance of City or Town Counsel. (See Appendix B for suggested considerations for an ordinance or by-law.)

13. SUBMISSION OF FINAL REPORT by Study Committee to City Council or Town Meeting.

The final report shall be submitted for consideration by the City Council or Town Meeting and the ordinance listed on the City Council Calendar or the by-law on the Town Warrant. The Study Committee should check with the City or Town Clerk to determine the exact deadline for filing. The following are suggested formats for the Warrant or Calendar:

Cities: City Council Calendar. Resolved, that the City Council adopt the following ordinance establishing an Historic District and an Historic District Commission under the provisions of Chapter 40C, General Laws, as most recently amended by Chapter 168, Acts of 1975, or take other suitable action.

Towns: The Warrant Article: ARTICLE ____ to see if the Town will vote to adopt the following by-law establishing an Historic District and an Historic District Commission, under the provisions of Chapter 40C, General Laws, as most recently amended by Chapter 168, Acts of 1975, or take other suitable action.

14. ADOPTION OF HISTORIC DISTRICT(S) by two-thirds vote of City Council or Town Meeting.

The ordinance or by-law establishing an historic district(s) and an Historic District Commission shall be adopted in cities by a two-thirds vote of City Council and in towns by a two-thirds vote of the Town Meeting.

15. APPROVAL BY ATTORNEY GENERAL OF BY-LAW (towns only).

Following approval of an historic district by Town Meeting, the by-law for the district must be submitted by the Town Clerk to the Attorney General for his approval. The by-law must be accompanied by adequate proof that all requirements of the law have been met in establishing the

particular historic district. The Attorney General must take action on the by-law within ninety days; if that period elapses without such action, the by-law may be assumed to have the Attorney General's approval. Materials which must be submitted to the Attorney General include the following items:

- a. All documents certified or attested by Town Clerk under seal of the Town.
- b. Vote of Selectmen establishing Historic District Study Committee.
- c. Certificate that members were duly appointed as provided by General Laws, Chapter 40C, Section 4, giving names and group represented, if any.
- d. Preliminary report of the Study Committee.
- e. Certificate that copies of the report, in the form required, were submitted to: Local Planning Board and Massachusetts Historical Commission. The certificate should indicate the date of transmittal of the report.
- f. Copy of notice of public hearing by the Study Committee and certification of how notice was given, including certification that it was sent in writing to the owners of all properties to be included in the district.
- g. Final report with recommendations of the Study Committee and draft by-law as submitted to the Town Meeting, signed by the members of the Committee, with attestation that they are members of such Committee.
- h. Copy of article in the Town Meeting warrant covering the subject.
- i. The date and manner by which notice of the warrant was given to the citizens and whether the notice complied with the town by-laws.
- j. A statement of the action taken on the article at the Town Meeting including the number of votes in the affirmative and the negative and a statement that a quorum (if required) was present.
- k. Two copies of the by-law as adopted.
- l. Two copies of a map in file size (not larger than 24 inches by 36 inches and preferably smaller) with proper legend showing the historic district. This may be on the existing zoning map if you have one.

16. EFFECTIVE DATE OF BY-LAW OR ORDINANCE

CITIES. The ordinance creating an historic district in a city will become effective when the requirements for effectiveness have been met which are provided by local ordinance and in Section 55 of Chapter 43 of the General Laws which reads:

Every order, ordinance, resolution and vote relative to the affairs of the city, adopted or passed by the city council, shall be presented to the mayor for his approval. If he approves it, he shall sign it; if he disapproves it, he shall return it, with his written objections, to the city council, which shall enter the objections at large on its records, and again consider it. If the city council, notwithstanding such disapproval of the mayor, shall again pass such order, ordinance, resolution or vote by a two-thirds vote of all its members, it shall then be in force, but such vote shall not be taken for seven days after its return to the city council. Every such order, ordinance, resolution and vote shall be in force if not returned by the mayor within ten days after it has been presented to him. This section shall not apply to budgets submitted under section thirty-two of chapter forty-four or to appropriations by a city council under section thirty-three of said chapter.

TOWNS. In addition to approval by the Attorney General (see 15 above), the by-law creating an historic district in a town must be published by one or more of the three means provided in Section 32 of Chapter 40 of the General Laws which reads:

...before a by-law takes effect it shall also be published in a town bulletin or pamphlet, copies of which shall be posted in at least five public places in the town, and if the town is divided into precincts, copies shall be posted in one or more public places in each precinct of the town; or, instead of such publishing in a town bulletin or pamphlet and such posting, copies thereof shall be published at least three times in one or more newspapers, if any, published in the town, otherwise in one or more newspapers of general circulation in the town. The requirements of publishing in a town bulletin or pamphlet and posting, or publishing in one or more newspapers, as above, may be dispensed with if notice of the by-law be given by delivering a copy thereof at every occupied dwelling or apartment in the town, and affidavits of the persons delivering the said copies, filed with the town clerk, shall be conclusive evidence of proper notice hereunder...

17. RECORDING HISTORIC DISTRICT(S) MAP with Registry of Deeds.

No ordinance or by-law creating an historic district(s) shall become effective until a map showing the boundaries of the district (a) has been filed with the City or Town Clerk, and (b) has been recorded by him in the Registry of Deeds for the county or district in which the city or town is located.

The provisions of Section 13a of Chapter 36, authorizing registers of deeds, with the approval of the Attorney General, to establish rules as to the size, material and other requirements for maps accepted for recording, *do not apply* to maps of historic districts. Nevertheless, where such rules exist, they should be followed as closely as is practicable to assure preservation of data on historic districts. It is suggested that the Study Committee check with the appropriate Registry of Deeds before preparing final maps of the historic district(s).

18. REQUESTS FOR NOMINEES are sent to organizations by the selectmen or mayor/city manager requesting submission of nominees who might serve on Historic District Commission.

Three to seven members serve on an Historic District Commission. These are appointed in towns by the Selectmen and in cities by the Mayor (or, where the city charter so requires, by the City Manager).

REQUIRED MEMBERSHIP. The law requires that, where possible, Historic District Commission membership include nominees from the organizations listed below. The Selectmen or Mayor/City Manager should request these organizations to submit nominees who might serve on an Historic District Commission.

Local Historical Society

One from two nominees submitted by the local historical society, or in the absence thereof, one from two nominees submitted by the Society for the Preservation of New England Antiquities, Dr. Abbott Lowell Cummings, Director, 141 Cambridge Street, Boston, Massachusetts 02114.

American Institute of Architects

One from two nominees submitted by the chapter of the American Institute of Architects covering the area: Massachusetts State Association of Architects, 320 Newbury Street, Boston, Massachusetts 02115.

Board of Realtors One from two nominees of the Massachusetts Board of Realtors covering the area. There are twenty-seven regional Boards of Realtors covering Massachusetts. Before requesting nominations, the Selectmen or Mayor/City Manager should contact the Massachusetts Association of Realtors for the current address of the appropriate regional board: Massachusetts Association of Realtors, 4863 Prudential Tower, Boston, Massachusetts 02199.

ADDITIONAL OR ALTERNATE NOMINATIONS. Nominations for members of the District Commission may be taken from additional or alternate organizations if (a) the report recommending the establishment of the district explains why such additional or alternate organizations would be appropriate or more appropriate for the city/town; (b) the Massachusetts Historical Commission does not recommend otherwise prior to the public hearing on the establishment of the district; and (c) the ordinance or by-law for the district so provides.

19. **APPOINTMENT OF HISTORIC DISTRICT COMMISSION** by Selectmen or Mayor/City Manager, subject to confirmation by City Council, after nominees' names are received or thirty days have elapsed without receipt.

APPOINTMENTS. In addition to those members required under 18 above, one or more residents or owners of property in the historic district *must be appointed to the Historic District Commission, unless the Study Committee's report recommends otherwise because of the small number of residents or owners and the ordinance or by-law so provides.* One, two or three more members may be appointed if so authorized in the vote to establish the District Commission or in any amendment thereof.

If any organizations listed under 18 above or any additional or alternate organization fails to submit nominations within thirty days, the Mayor/City Manager or Selectmen may appoint members of the Historic District Commission without nominations from that organization.

ADDITIONAL MEMBERSHIP SUGGESTIONS. The Historic District Commission can be most effective if its membership, like that of the Study Committee, represents a variety of organizations and individuals whose interests are allied with historic preservation. A *lawyer* can be a great help to the Commission in interpreting the Historic District Act and the Commission's own ordinance or by-law. His services will also be needed in the event of appeals against decisions made by the Commission. A *professional historian* can supervise continuing research on the historic dis-

trict and can provide statements on the significance of individual buildings and structures when necessary. He may also assist the Commission in determining the effect of proposed construction or alterations on the historic values of the historic district.

A professional architectural historian will be a valuable back-stop to the Commission's architect. While the architect evaluates each building on the basis of its design merit, the architectural historian can evaluate each building in an historical context. Both architect and architectural historian will cooperate in determining the effect of proposed construction or alterations on the architectural value of the district. The services of a *landscape architect* will be valuable to the Historic District Commission in maintaining an appropriate setting for the individual buildings and for the district as a whole. Members chosen from the *Planning Board, Conservation Commission and other local agencies* can insure that those agencies cooperate in the administration of the historic district. Most important, the members of the Historic District Commission should be those who have a genuine interest in historic preservation and in the particular historic district and who are willing to contribute the time necessary to provide for effective operation of the Commission.

ALTERNATE MEMBERS OF THE HISTORIC DISTRICT COMMISSION. The ordinance or by-law creating an historic district may provide for the appointment in the like manner of alternate members, not exceeding in number the principal members of the Commission. These members need not be appointed from nominees of the local historical society, the American Institute of Architects or the Board of Realtors. Alternate members should have the same interest in historic preservation as the regular members and should be chosen on the basis of the contribution they can make to the Historic District Commission. If the Historic District Commission is small, it is advisable to appoint alternate members in order to insure a quorum for meetings.

CONFLICT OF INTEREST LAW. Under Chapter 268A, General Laws, if any Commission member is to hold a city or town job or to have directly or indirectly a financial interest in any contract with the city or town, classification of the member by the City Council, Alderman or Selectmen as "special municipal employee" should be obtained and disclosure statements and other requirements met.

20. NOTICE OF ESTABLISHMENT sent to Massachusetts Historical Commission.

Following approval of an historic district by a city or town, notice of the establishment of the district, a copy of the ordinance or by-law

as enacted and a map of the district must be sent to the Massachusetts Historical Commission. If the ordinance or by-law and the map do not differ from those accompanying the preliminary report, only the notice of establishment need be submitted to the Massachusetts Historical Commission, and the notice should state that there has been no change.

Additional materials must be filed with the Massachusetts Historical Commission by the Historic District Commission following its appointment. These include membership rosters, annual reports, and other publications which the District Commission may issue.

Suggested Guidelines for Preliminary Report

- I. INTRODUCTION — purpose of introduction is to explain what an historic district is, the values of a district and why those values should be applied to the area under consideration
 - A. Explanation of what historic districts are designed to do and a brief history of the historic district movement in the United States and in Massachusetts
 - B. Relation of the proposed historic district(s) to the city or town (reasons why the proposed historic district(s) will benefit your city or town)
- II. HOW THE STUDY COMMITTEE CHOSE THE AREA(S) — method of inventory
 - A. Summary of inventory method
 - B. Summary of criteria used to evaluate what was inventoried and to locate potential districts
 - C. Summary of results of the inventory and of the evaluation of all potential districts
 - D. Primary reason why the Study Committee chose to create the district(s) proposed in the preliminary report (most historic, most in need of protection, other reasons)
- III. JUSTIFICATION OF HISTORIC DISTRICT(S) — the quality of the information presented here will largely determine the sort of comments and recommendations which the Study Committee will receive from the Massachusetts Historical Commission and from the local planning board. Equally important, it will have a great effect on the reaction to the preliminary report at the public hearing. *The points listed below are intended as a general guideline.* Each may be considered in preparing the preliminary report. Any additional evidence of historical or architectural significance which the Study Committee can provide should, of course, be included to strengthen the case for the creation of the historic district(s).
 - A. Description of the district(s) as a whole. Well-written paragraphs should be used to explain the physical appearance and the historical and architectural significance of the historic district(s) as a whole. These paragraphs will be, in effect, a summary of the material on individual buildings and structures which follows in this section of the report. They may include the following
 1. Description of the atmosphere of the district (rural, urban, commercial, residential or some other type)

2. General description of the siting of the district. Include a summary of the appearance of the land immediately surrounding the district and of the approaches to it.
3. General summary of the history of the district and explain its importance to the development of the city or town. Include in the summary any special effect which the location and topography (siting) of the district has had on its development. Identify any significant persons, groups or events which have been associated with the district as a whole and include specific dates whenever possible. Briefly explain the significance of the persons, groups or events as well as the nature of their association. Be sure to document all the information in this summary with specific footnotes.
4. Summary of the architectural significance of the district. Is there one predominant architectural style or a blend of compatible styles? Is the architecture an expression of the history of the district (for example, a group of Federal style houses built with profits from the China Trade or row houses built for mill workers)? Does a particular combination of architectural styles illustrate the development of the city or town or of the district? How does the architecture contribute to the historical significance of the district (are there noteworthy examples of a style or styles or of a period or method of construction)?
5. Description of the general appearance of the landscape in the district. Note the type and general location of predominant planting (for example, maple trees along the main street or elms on the common). Include a brief description and general location for any special features of the landscape (such as commons, cemeteries, parks or public gardens, parking areas, stone walls and others). Is there any evidence of special planning in the development of the landscape or of the street patterns of the district? If so, explain that planning and document the information whenever possible.
6. Description of the type (meadow, forest, orchard, swamp, etc.) and location of open space included in the district. Explain how much open space is included and its use, if any (wildlife sanctuary, conservation, recreation, commercial, other). Justify the inclusion of this open space; possible reasons might be historical significance, setting for the district, protection for significant areas within the district. Be sure to explain fully as including large areas of open space in an historic district without sufficient justification will weaken the historic and architectural validity of the whole district.
7. Note any intrusions or incongruous elements which appear in the district and justify their inclusion. These inclusions might include:
 - a. Commercial or industrial intrusions in a residential area

- b. Buildings or structures whose architecture is not in harmony with the style and mass of surrounding buildings and structures
- c. Heavily traveled streets or roads, power lines, railroad tracks, bodies of water which cut the district into sections
- d. Other elements which create obvious breaks in the general character of the district (as with open space, intrusions or incongruous elements which are included in an historic district without sufficient justification will weaken the historical and architectural validity of the whole district)

B. Justification of boundaries of the historic district on the basis of:

- 1. Historical significance
- 2. Architectural significance, congruity or compatibility
- 3. Natural boundaries
- 4. Necessary protection for the setting of the district
- 5. Agreement with conservation and other agencies
- 6. Will of the residents of the proposed district, as shown in a poll
- 7. Explanation of other factors which unite the individual buildings and their settings into a district

C. Description of individual buildings

- 1. Number each building or structure in district and key to map of the historic district
- 2. Describe physical appearance, landscape or setting, and historical importance or value to the district of each building or structure which is architecturally or historically significant. Descriptions of other buildings or structures within the district may be briefer; they should include the use or type, size, construction material, approximate date and condition of building or structure.
 - a. Architecture: Describe only the exterior appearance of the building or structure. (If there is a row of buildings having similar features, the report may describe the row as a unit and note the number of buildings.) Include the type of use; architect (if known or if one exists) and the source of information; the architectural style; a documented date of construction; alterations or additions which are visible from the public way and their dates for buildings or structures or significance. Obvious inclusions: height of building or structure (number of stories),

material covering the facade; type of roof; number and placement of major chimneys; type and placement of windows and/or doors; and unusual or characteristic decorative features or architectural elements found on the facades. Condition of building or structure should also be noted

- b. Landscape or setting: Briefly describe the landscape or setting of the building or structure, including approximate set-back of the building from the street; distance between building and its neighbors; position of building on property (situated on a rise, slope, etc.); plantings (location of major groups of shrubs and trees and their orders - deciduous or evergreen); location and types of any landscape features of special interest (gardens, etc.); effect of planting on building or structure; location, size and type of all appurtenances (fences, walls, drives, parking areas)
- c. Historical significance: Conclude report on each major building or structure with full statement of its historical significance. This should be more than a record of ownership. Identify any significant persons, groups or events associated with building or structure. Be sure to explain the nature of each association and give specific dates; include enough information on persons, groups or events to make clear exactly how they are significant. Remember that local significance carries as much or more weight than state or national significance in justifying the creation of historic districts. Document all this information with specific footnotes

IV. OPTIONS AND RECOMMENDATIONS ALLOWED UNDER HISTORIC DISTRICT ACT (see pp. 12-15)

- A. List of membership-administrative options and recommendations for historic district
- B. Study Committee's reasons for each membership-administrative option or recommendation. Reasons should be tied to material presented under III above (justification of historic district)

V. BIBLIOGRAPHY — sources relating to proposed historic district and to history of city or town

VI. APPENDICES TO PRELIMINARY REPORT

- A. Map(s): (see p. 14)
- B. Photographs (see p. 15)
- C. Outline of ordinance of by-law (see p. 15 and Appendix B)
- D. Inventory forms (see p. 15)

Considerations for a Draft Ordinance or By-law

Listed below are some of the items which must or may be included in a draft ordinance or by-law.

I. MEMBERSHIP

- A. The ordinance or by-law *must* stipulate the number of regular members to serve on the Historic District Commission. Included among them, when possible, are nominees from:
 1. Local historical society or the Society for the Preservation of New England Antiquities
 2. Chapter of the American Institute of Architects covering the area
 3. Board of realtors covering the area
 4. Residents of the district (unless exempted in the recommendations of the Study Committee and so stated in the ordinance or by-law)
- B. The ordinance or by-law *must* also specify the number of members who will serve for one, two or three year terms of office when the District Commission is first established. Certain membership options may be included in the ordinance or by-law if recommended in the Study Committee's report. These include:
 1. A stipulated number of alternate members and a statement of how many will serve for one, two and three year terms of office when the District Commission is first established
 2. The administration of the proposed district by an existing Historic District Commission (see Membership and Administrative Options, p. 14)
 3. Members from additional or alternate organizations (see Membership and Administrative Options, p. 14)

II. BOUNDS.

The ordinance or by-law *must* include either a written description or map of the boundaries of the proposed district.

III. POWERS AND DUTIES.

The powers and duties of the Historic District Commission should be stated in the ordinance or by-law. These include the considerations for judging the appropriateness of constructions or alterations. Also included should be a statement regarding the Commission's ability to:

- A. Adopt and amend rules and regulations for the conduct of its business (refer to Section 10e of the Historic Districts Act)

- B. Employ clerical and technical assistants or consultants and accept monetary gifts for this purpose
- C. Administer for the city or town any properties and lesser interests which the city or town may own or may acquire as gifts (refer to Section 10h of the Historic Districts Act)
- D. Carry out other duties, authority and powers which may be delegated or assigned it by the city or town (refer to Section 10i of the Historic Districts Act; see also Section 14 of the Act)

IV. EXCLUSIONS FROM COMMISSION CONTROL. If any limitations upon the control exercised by the Historic District Commission are to be set, these should be included in the ordinance or by-law (see Options Available for Historic District Control, p. 12-13; refer also to Sections 8a and 8c of the Historic District Act)

V. DETERMINATIONS ON APPLICATIONS. The ordinance or by-law may provide a specified number of days within which the Commission must make a determination on an application for a certificate (refer to Section 11 of the Historic Districts Act)

Appendix

A. HISTORIC DISTRICTS IN MASSACHUSETTS

<u>City/Town</u>	<u>Legislation</u>
Alford	Chapter 40C, Gen. Laws, by law 1975
Arlington	Chapter 40C, Gen. Laws, by-law 1977
Bedford	Chapter 118, Acts of 1964
Belmont	Chapter 40C, Gen. Laws, by-law 1972
Beverly	Chapter 40C, Gen. Laws, ordinance 1971
Boston*	Chapter 625, Acts of 1966 Chapter 616, Acts of 1955 Chapter 622, Acts of 1963
Boxford*	Chapter 40C, Gen. Laws, by-law 1970
Cambridge	Chapter 40C, Gen. Laws, ordinance 1963, amended 1976
Carlisle	Chapter 40C, Gen. Laws, ordinance 1963
Chelmsford	Chapter 40C, Gen. Laws, by-law 1975
Concord*	Chapter 345, Acts of 1960
Danvers	Chapter 40C, Gen. Laws, by-law 1974
Dedham*	Chapter 40C, Gen. Laws, by-law 1975
Dennis	Chapter 40C, Gen. Laws, by-law 1974
Falmouth*	Chapter 654, Acts of 1975
Fitchburg	Chapter 40C, Gen. Laws, ordinance 1975
Gloucester	Chapter 40C, Gen. Laws, ordinance 1977
Groton*	Chapter 40C, Gen. Laws, by-law 1965
Hamilton	Chapter 40C, Gen. Laws, by-law 1972
Harvard*	Chapter 40C, Gen. Laws, by-law 1972
Harwich	Chapter 40C, Gen. Laws, by-law 1970
Haverhill*	Chapter 40C, Gen. Laws, ordinance 1974
Hingham*	Chapter 502, Acts of 1966
Holden	Chapter 40C, Gen. Laws, by-law 1973
Lenox	Chapter 40C, Gen. Laws, by-law 1975
Lexington*	Chapter 447, Acts of 1956 Chapter 158, Acts of 1958
Longmeadow	Chapter 40C, Gen. Laws, by-law 1973
Lowell*	Chapter 40C, Gen. Laws, ordinance 1973
Manchester	Chapter 40C, Gen. Laws, by-law 1975
Marblehead*	Chapter 101, Acts of 1965
Nantucket	Chapter 601, Acts of 1956 Chapter 395, Acts of 1970
Natick	Chapter 40C, Gen. Laws, by-law 1974
New Bedford	Chapter 40C, Gen. Laws, ordinance 1971
Northboro	Chapter 40C, Gen. Laws, ordinance 1973
Norton	Chapter 40C, Gen. Laws, by-law 1975
Petersham	Chapter 211, Acts of 1966
Plymouth	Chapter 40C, Gen. Laws, by-law 1973

Plympton	Chapter 40C, Gen. Laws, by-law 1972
Quincy*	Chapter 40C, Gen. Laws, ordinance 1975
Rockport*	Chapter 40C, Gen. Laws, by-law 1977
Salem*	Chapter 40C, Gen. Laws, ordinance 1972
Sandwich	Chapter 40C, Gen. Laws, by-law 1965
Sharon	Chapter 40C, Gen. Laws, by-law 1970
Shirley	Chapter 40C, Gen. Laws, by-law 1973
Shrewsbury*	Chapter 40C, Gen. Laws, by-law 1973
Springfield*	Chapter 40C, Gen. Laws, ordinance 1972
Sudbury*	Chapter 40, Acts of 1963
Tisbury	Chapter 40C, Gen. Laws, by-law 1975
Topsfield	Chapter 40C, Gen. Laws, by-law 1974
Townsend	Chapter 40C, Gen. Laws, by-law 1975
Wareham*	Chapter 40C, Gen. Laws, by-law 1971
Wayland	Chapter 40C, Gen. Laws, by-law 1965
Wenham	Chapter 40C, Gen. Laws, by-law 1972
West Newbury	Chapter 40C, Gen. Laws, by-law 1976
West Springfield	Chapter 40C, Gen. Laws, by-law 1972
Westport*	Chapter 40C, Gen. Laws, by-law 1973
Winchendon	Chapter 40C, Gen. Laws, by-law 1974
Worcester	Chapter 40C, Gen. Laws, ordinance 1975
Yarmouth	Chapter 694, Acts of 1965
Barnstable County (Old Kings Highway Regional Historic District)	Chapter 638, Acts of 1973

* community has more than one district

B. HISTORIC DISTRICTS ACT, CHAPTER 40C, GENERAL LAWS established by Chapter 373, Acts of 1960, as most recently amended by Chapter 706, Acts of 1975:

Section 1. This chapter shall be known and may be cited as the Historic Districts Act.

Section 2. The purpose of this chapter is to promote the educational, cultural, economic and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places significant in the history of the commonwealth and its cities and towns or their architecture, and through the maintenance and improvement of settings for such buildings and places and the encouragement of design compatible therewith.

Section 3. A city or town may, by ordinance or by-law adopted by two thirds vote of the city council in a city or by a two thirds vote of a town meeting in a town, establish historic districts subject to the following provisions: Prior to the establishment of any historic district in a city or town, an investigation and report on the historical and architectural significance of the buildings, structures or sites to be included in the proposed historic district or districts shall be made by an historic district study committee or by an historic district commission, as provided in this section and in section four, who shall transmit copies of the report to the planning board, if any, of the city or town, and to the Massachusetts historical commission for their respective consideration and recommendations. The buildings, structures or sites to be included in the proposed historic district may consist of one or more parcels or lots of land, or one or more buildings or structures on one or more parcels or lots of land. The Massachusetts historical commission may consult with the commissioner of commerce and development, the secretary of communities and development and the commissioner of environmental management with respect to such reports, and may make guidelines for such reports, and, after public hearing, establish rules as to their form and manner of transmission. Not less than sixty days after such transmittal the study committee shall hold a public hearing on the report after due notice given at least fourteen days prior to the date thereof, which shall include a written notice mailed postage prepaid, to the owners as they appear on the most recent real estate tax list of the board of assessors of all properties to be included in such district or districts. The committee shall submit a final report with its recommendations, a map of the proposed district or districts and a draft of a proposed ordinance or by-law, to the city council or town meeting.

An historic district may be enlarged or reduced or an additional historic district in a city or town created in the manner provided for creation of the initial district, except that (a) in the case of the enlargement or reduction of an existing historic district the investigation, report and hearing shall be by the historic district commission having jurisdiction over such historic district instead of by a study committee; (b) in the case of creation of an additional historic district the investigation, report and hearing shall be by the historic district commission of the city or town, or by the historic district commissions acting jointly if there be more than one, instead of by a study committee unless the commission or commissions recommend otherwise;

and (c) if the district is to be reduced written notice as above provided of the commission's hearing on the proposal shall be given to said owners of each property in the district.

Any ordinance or by-law creating an historic district may, from time to time, be amended in any manner not inconsistent with the provisions of this chapter by a two thirds vote of the city council in a city or by a two thirds vote of a town meeting in a town, provided that the substance of such amendment has first been submitted to the historic district commission having jurisdiction over such district for its recommendation and its recommendation has been received or sixty days have elapsed without such recommendation.

No ordinance or by-law creating an historic district, or changing the boundaries of an historic district, shall become effective until a map or maps setting forth the boundaries of the historic district, or the change in the boundaries thereof, has been filed with the city clerk or town clerk and has been recorded in the registry of deeds for the county or district in which the city or town is located, and the provisions of section thirteen A of chapter thirty-six shall not apply.

Section 4. An historic district study committee may be established in any city or town by vote of the city council or board of selectmen for the purpose of making an investigation of the desirability of establishing an historic district or districts therein. The study committee shall consist of not less than three nor more than seven members appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen, including one member from two nominees submitted by the local historical society or, in the absence thereof by the Society for the Preservation of New England Antiquities, one member from two nominees submitted by the chapter of the American Institute of Architects covering the area, and one member from two nominees of the board of realtors, if any, covering the area. If within thirty days after submission of a written request for nominees to any of the organizations herein named no such nominations have been made the appointing body may proceed to appoint the study committee without nominations by such organization.

Whenever an historic district is established as provided in section three an historic district commission shall be established which shall consist of not less than three nor more than seven members. An historic district commission shall be appointed in a city by the mayor, subject to confirmation by the city council, or in a town by the board of selectmen, in the same manner as an historic district study committee unless (a) the report recommending its establishment recommends alternate or additional organizations to submit nominees for membership and states reasons why such alternate or additional organizations would be appropriate or more appropriate for the particular city or town, the Massachusetts historical commission does not recommend otherwise prior to the public hearing on the establishment of the district, and the ordinance or by-law so provides; or (b) there is an existing historic district commission in the city or town which the report recommends should administer the new district, and the ordinance or by-law so provides. Unless the report recommends otherwise on account of the small number of residents or individual property owners, and the ordinance or by-law so provides, the members of the historic district commission shall include one or more residents of or owners of property in an historic district to be administered by the commission. If

within thirty days after submission of a written request for nominees to an organization entitled to submit nominations for membership on the commission no such nominations have been made the appointing body may proceed to make the appointment to the commission without nomination by such organization. The appointments to membership in the commission shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in the same manner as the original appointment for terms of three years. Vacancies shall be filled in the same manner as the original appointment for the unexpired term. Ordinances or by-laws adopted hereunder may provide for the appointment of alternate members not exceeding in number the principal members who need not be from nominees of organizations entitled to nominate members. In case of the absence, inability to act or unwillingness to act because of self-interest on the part of a member of the commission, his place shall be taken by an alternate member designated by the chairman. Each member and alternate shall continue in office after expiration of his term until his successor is duly appointed and qualified. All members shall serve without compensation. The commission shall elect annually a chairman and vice-chairman from its own number and a secretary from within or without its number.

Section 5. As used in this chapter the word "altered" includes the words "rebuilt", "reconstructed", "restored", "removed" and "demolished" and the phrase "changed in exterior color"; the word "building" means a combination of materials forming a shelter for persons, animals or property; the word "commission" means the commission acting as the historic district commission; the word "constructed" includes the words "built", "erected", "installed", "enlarged" and "moved"; the words "exterior architectural feature" mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures; and the word "structure" means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

Section 6. Except as the ordinance or by-law may otherwise provide in accordance with section eight or said section eight or nine, no building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and

no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

Section 7. In passing upon matters before it the commission shall consider, among other things, the historic and architectural value and significance of the site, building or structure, the general design, arrangement, texture, material and color of the features involved, and the relation of such features to similar features of buildings and structures in the surrounding area. In the case of new construction or additions to existing buildings or structures the commission shall consider the appropriateness of the size and shape of the building or structure both in relation to the land area upon which the building or structure is situated and to buildings and structures in the vicinity, and the commission may in appropriate cases impose dimensional and set-back requirements in addition to those required by applicable ordinance or by-law. The commission shall not consider interior arrangements or architectural features not subject to public view.

The commission shall not make any recommendation or requirement except for the purpose of preventing developments incongruous to the historic aspects or the architectural characteristics of the surroundings and of the historic district.

Section 8. (a) Any city or town may provide in the ordinance or by-law establishing a district or in any amendment thereof that the authority of the commission shall not extend to the review of one or more of the following categories of buildings or structures or exterior architectural features in the historic district and, in this event, the buildings or structures or exterior architectural features so excluded may be constructed or altered within the historic district without review by the commission:

(1) Temporary structures or signs, subject, however, to such conditions as to duration of use, location lighting, removal and similar matters as the commission may reasonably specify.

(2) Terraces, walks, driveways, sidewalks and similar structures, or any one or more of them, provided that any such structure is substantially at grade level.

(3) Walls and fences, or either of them.

(4) Storm doors and windows, screens, window air conditioners, lighting fixtures, antennae and similar appurtenances, or any one or more of them.

(5) The color of paint.

(6) The color of materials used on roofs.

(7) Signs of not more than one square foot in area in connection with use of a residence for a customary home occupation or for professional purposes, provided only one such sign is displayed in connection with each residence and if illuminated is illuminated only indirectly; and one sign in connection with the nonresidential use of each building or structure which is not more than twelve square feet in area, consist of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly; or either of them.

(8) The reconstruction, substantially similar in exterior design, of a building, structure or exterior architectural feature damaged or destroyed by

fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.

(b) A commission may determine from time to time after public hearing that certain categories of exterior architectural features, colors, structures or signs, including, without limitation, any of those enumerated under paragraph (a), if the provisions of the ordinance or by-law do not limit the authority of the commission with respect thereto, may be construed or altered without review by the commission without causing substantial derogation from the intent and purposes of this chapter.

(c) A city or town may provide in its ordinance or by-law, or in any amendment thereof, that the authority of the commission shall be limited to exterior architectural features within a district which are subject to view from one or more designated public streets, public ways, public parks or public bodies of water, although other portions of buildings or structures within the district may be otherwise subject to public view, and, in the absence of such provision of the ordinance or by-law, a commission may determine from time to time after public hearing that the authority of the commission may be so limited without substantial derogation from the intent and purposes of this chapter.

(d) Upon request the commission shall issue a certificate of non-applicability with respect to construction or alteration in any category then not subject to review by the commission in accordance with the provisions of paragraph (a) (b) or (c).

Section 9. Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the applicable historic district ordinance or by-law.

Section 10. The commission shall have the following additional powers, functions and duties: --

(a) If the commission determines that the construction or alteration for which an application for a certificate of appropriateness has been filed will be appropriate for or compatible with the preservation or protection of the historic district, the commission shall cause a certificate of appropriateness to be issued to the applicant. In the case of a disapproval of an application for a certificate of appropriateness the commission shall place upon its records the reasons for such determination and shall forthwith cause a notice of its determination, accompanied by a copy of the reasons therefor as set forth in the records of the commission, to be issued to the applicant, and the commission may make recommendations to the applicant with respect to appropriateness of design, arrangement, texture, material and similar features. Prior to the issuance of any disapproval the commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal which, if made, would make the application acceptable to the commission. If within fourteen days of the receipt of such notice the applicant files a written modification of his application in conformity with the recommended changes of the commission, the commission shall cause a certificate of appro-

priateness to be issued to the applicant.

(b) In the case of a determination by the commission that an application for a certificate of appropriateness or for a certificate of nonapplicability does not involve any exterior architectural feature, or involves an exterior architectural feature which is not then subject to review by the commission in accordance with the provisions of section eight, the commission shall cause a certificate of nonapplicability to be issued to the applicant.

(c) If the construction or alteration for which an application for a certificate of appropriateness has been filed shall be determined to be inappropriate, or in the event of an application for a certificate of hardship, the commission shall determine whether, owing to conditions especially affecting the building or structure involved, but not affecting the historic district generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this chapter. If the commission determines that owing to such conditions failure to approve an application will involve substantial hardship to the applicant and approval thereof may be made without such substantial detriment or derogation, or, in the event of failure to make a determination on an application within the time specified in section eleven, the commission shall cause a certificate of hardship to be issued to the applicant.

(d) Each certificate issued by the commission shall be dated and signed by its chairman, vice-chairman, secretary or such other person designated by the commission to sign such certificates on its behalf.

(e) The commission shall keep a permanent record of its resolutions, transactions and determinations and of the vote of each member participating therein, and may adopt and amend such rules and regulations not inconsistent with the provisions of this act and prescribe such forms as it shall deem desirable and necessary for the regulation of its affairs and the conduct of its business. The commission shall file a copy of any such rules and regulations with the city or town clerk.

(f) The commission shall file with the city or town clerk and with any department of the city or town having authority to issue building permits a copy or notice of all certificates and determinations of disapproval issued by it.

(g) A commission may after public hearing set forth in such manner as it may determine the various designs of certain appurtenances, such as light fixtures, which will meet the requirements of an historic district and a roster of certain colors of paint and roofing materials which will meet the requirements of an historic district, but no such determination shall limit the right of an applicant to present other designs or colors to the commission for its approval.

(h) The commission may, subject to appropriation, employ clerical and technical assistants or consultants and incur other expenses appropriate to the carrying on of its work, and may accept money gifts and expend the same for such purposes. The commission may administer on behalf of the city or town any properties or easements, restrictions or other interests in real property which the city or town may have or may accept as gifts or otherwise and

which the city or town may designate the commission as the administrator thereof.

(i) The commission shall have, in addition to the powers, authority and duties granted to it by this act, such other powers, authority and duties as may be delegated or assigned to it from time to time by vote of the city council or town meeting.

Section 11. Meetings of a commission shall be held at the call of the chairman and shall be called at the request of two members of the commission and in such other manner as the commission shall determine in its rules. A majority of the members of a commission shall constitute a quorum. The concurring vote of a majority of the members of the commission shall be necessary to issue a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship.

A commission shall determine promptly, and in all events within fourteen days after the filing of an application for a certificate of appropriateness, a certificate of nonapplicability or a certificate of hardship, as the case may be, whether the application involves any exterior architectural features which are subject to approval by the commission. If a commission determines that such application involves any such features which are subject to approval by the commission the commission shall hold a public hearing on such application unless such hearing is dispensed with as herein-after provided.

The commission shall fix a reasonable time for the hearing on any application and shall give public notice of the time, place and purposes thereof at least fourteen days before said hearing in such manner as it may determine, and by mailing, postage prepaid, a copy of said notice to the applicant, to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as they appear on the most recent real estate tax list of the board of assessors, to the planning board of the city or town, to any person filing written request for notice of hearings, such request to be renewed yearly in December, and to such other persons as the commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within sixty days after the filing of the application, or such lesser period as the ordinance or by-law may provide, or within such further time as the applicant may allow in writing, the commission shall make a determination on the application. If the commission shall fail to make a determination within such period of time the commission shall thereupon issue a certificate of hardship.

A public hearing on an application need not be held if such hearing is waived in writing by all persons entitled to notice thereof. In addition, a public hearing on an application may be waived by the commission if the commission determines that the exterior architectural feature involved or its category or color, as the case may be, is so insubstantial in its effect on the historic district that it may be reviewed by the commission without public hearing on the application, provided, however, that if the commission dispenses with a public hearing on an application notice of the application shall be given to the owners of all adjoining property and other property deemed by the commission to be materially affected thereby as above provided and ten days shall elapse after the mailing of such notice before the commission may act upon such application.

Section 12. A city or town may provide in its ordinance or by-law or in any amendment thereof, for a review procedure whereby any applicant aggrieved by a determination of the commission may, within twenty days after the filing of the notice of such determination with the city or town clerk, file a written request with the commission for a review by a person or persons of competence and experience in such matters, designated by the regional planning agency of which the city or town is a member. If the city or town is not a member of a regional planning agency, the department of community affairs shall select the appropriate regional planning agency.

The finding of the person or persons making such review shall be filed with the city or town clerk within forty-five days after the request, and shall be binding on the applicant and the commission, unless a further appeal is sought in the superior court as provided in section twelve A.

Section 12A. Any applicant aggrieved by a determination of the commission, or by the finding of a person or persons making a review, if the provisions of section twelve are included in a local ordinance or by-law, may, within twenty days after the filing of the notice of such determination or such finding with the city or town clerk, appeal to the superior court sitting in equity for the county in which the city or town is situated. The court shall hear all pertinent evidence and shall annul the determination of the commission if it finds the decision of the commission to be unsupported by the evidence, or to exceed the authority of the commission, or may remand the case for further action by the commission, or make such other decree as justice and equity may require. The remedy provided by this section shall be exclusive; but the parties shall have all rights of appeal and exception as in other equity cases. Costs shall not be allowed against the commission unless it shall appear to the court that the commission acted with gross negligence, in bad faith or with malice in the matter from which the appeal was taken. Costs shall not be allowed against the party appealing from such determination of the commission unless it shall appear to the court that the appellant acted in bad faith or with malice in making the appeal to the court.

Section 13. The superior court sitting in equity for the county in which the city or town is situated shall have jurisdiction to enforce the provisions of this chapter and any ordinance or by-law enacted hereunder and the determinations, rulings and regulations issued pursuant thereto and may, upon the petition of the mayor or of the board of selectmen or of the commission, restrain by injunction violations thereof; and, without limitation, such court may order the removal of any building, structure or exterior architectural feature constructed in violation thereof, or the substantial restoration of any building, structure or exterior architectural feature altered or demolished in violation thereof, and may issue such other orders for relief as may be equitable.

Whoever violates any of the provisions of this chapter shall be punished by a fine of not less than ten dollars nor more than five hundred dollars. Each day during any portion of which a violation continues to exist shall constitute a separate offense.

Section 14. If the city council or town meeting so votes a commission established hereunder shall have the powers and duties of an historical commission as provided in section eight D of chapter forty and, in this event, a commission may be entitled an historical commission.

Section 15. All ordinance or by-laws creating an historic district adopted by a city or town under authority of this chapter and under authority of any special law, unless the special law shall otherwise provide, amendments thereto,

maps of historic districts created thereunder, and annual reports and other publications of commissions, and rosters of membership therein, shall be filed with the Massachusetts historical commission.

Section 16. A city or town in which there is located an historic district established under a special law may, upon recommendation of the historic district commission having jurisdiction over such district, accept the provisions of this chapter with respect to such district by a two thirds vote of the city council in a city or by two thirds vote of a town meeting in a town, and thereafter such historic district shall be subject to the provisions of this chapter notwithstanding the terms of any special act pursuant to which such historic district was created. The provisions of this chapter shall not impair the validity of an historic district established under any special act.

Section 17. The provisions of this chapter shall be deemed to be severable. If any of its provisions shall be held to be invalid or unconstitutional by any court of competent jurisdiction the remaining provisions shall continue in full force and effect.

C. CHAPTER 144, ACTS OF 1975. An act providing that certain statutes, ordinances and by-laws relative to historic districts, regional historic districts and architecturally controlled districts shall prevail over the state building code.

Section 1. Chapter 802 of the acts of 1972 is hereby amended by striking out section 75, as amended by section 20 of chapter 541 of the acts of 1974, and inserting in place thereof the following section:

Section 75. All by-laws and ordinances of cities and towns or regulations promulgated by any state boards, commissions, agencies or departments or any special acts of any specific regulations promulgated by a local official under section twenty-eight of chapter one hundred and forty-eight of the General Laws in conflict with the state building code shall cease to be effective on January first, nineteen hundred and seventy-five; provided, however, that in the event of a conflict between the provisions of the code and a statute, ordinance or by-law regulating any historic district, regional historic district or architecturally controlled district, provisions of any such statute, ordinance or by-law regulating exterior architectural features within such district shall prevail.

Section 2. The first paragraph of section 3A of chapter 143 of the General Laws, as most recently amended by section 12 of chapter 541 of the acts of 1974, is hereby amended by striking out the first sentence and inserting in place thereof the following two sentences:- Unless otherwise provided by the provisions of the state building code, the local inspector shall enforce the state building code as to any building or structure within the city or town from which he is appointed, including any building or structure owned by any authority established by the legislature but not owned by the commonwealth, and such state building code shall be the code for all buildings and structures within such city or town. In the event of a conflict between said code and a statute, ordinance or by-law regulating any historic district, regional historic district or architecturally controlled district, provisions of any such statute, ordinance or by-law regulating exterior architectural features within such district shall prevail.

Section 3. This act shall take effect as of January first, nineteen hundred and seventy-five.

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